IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/02/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No.11552 of 2001
and
W.M.P. No. 16762 of 2001

Y. Duraisamy ... Petitioner

-Vs-

1. The Commissioner
Corporation of Chennai
Ripon Buildings
Chennai – 600 003

2. The Sanitary Inspector
Division No.30, Circle 2
Corporation of Chennai
Sanitary Inspector's Office
Ripon Buildings
Chennai – 600 003

3. The Assistant Health Officer
Zone II, Corporation of Chennai
Ripon Buildings
Chennai – 600 003 ... Respondents

Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. Ashok Menon

For Respondents : Mrs. P. Bhagyalakshmi for Corporation

:ORDER

The petitioner has filed the above writ petition seeking for a Writ of Certiorarified Mandamus to call for the records of the respondents leading upto the communication of the second respondent to the petitioner dated 12-04-2001 in so far as it relates to the demand that the petitioner should produce a No Objection Certificate from the other legal heirs mentioned in the legal heir certificate of Late. Hazarathiah and quash the same as illegal and invalid and direct the

respondents to transfer the licence of Nellore Lodge at No.75, Govindappa Naicken Street, Chennai in favour of the petitioner herein.

2. Heard both sides. Mr. Ashok Menon, learned counsel appearing for the petitioner argued that the petitioner and other three persons were running a business in the name and style of Nellore Lodge at No.75 , Govindappa Naicken Street, Chennai and their Partnership was also duly registered as contemplated under the Indian Partnership Act. The licence in respect of the Nellore lodge was in the name of one of the partners namely Hazarathiah, who is none other than the father of the petitioner has passed away on 04-06-2000. Immediately, the petitioner has submitted an application dated 01-04-1993 to the 1st respondent to transfer the licence of the lodging house in his name. Thereafter, the second respondent has passed the impugned order stating that:

"Before submitting application the following certificates etc., to be enclosed along with application form. The application form will be submitted within 15 days from the date of receipt of application.

1. Annual improvements to be carried out i.e., white washing, colour washing, painting etc.,
2. Food handlers certificate certified from dispensary medical officers
3. Water Analylist report
4. Professional tax paid receipt 95-96 2nd half
5. Property tax paid receipt 95-96 2nd half
6. Conservancy charges paid receipt
7. Copy of Registration Certificate for the year 1995-1996
8. N.S.C. to a value of Rs.5,000/-
9. Certificate from Senior Entemologist the Over-head Tank and Sump are sealed
10. With legal heirship Certificate and N.O.C. from others as mentioned in the legal heir certificates."

The learned counsel appearing for the petitioner argued that except the document No.10 i.e., production of No Objection Certificate from the other legal heirs, the petitioner is prepared to submit all other certificates as required by the 2nd respondent and advocate notice dated 20-04-2001 was sent to the respondents to that effect. It is the case of the petitioner that he need not produce No Objection Certificate of the other legal heirs since no such condition is contemplated in the Madras City Municipal Corporation Act.

3. Miss. Bhagyalakshmi, learned counsel appearing for the respondents/Corporation argued that the other six legal heirs of Late. Hasarathiah opposed to the transfer of the licence in the name of the petitioners by submitting objection letter on 28-03-2001. After receipt of the objections from the legal heirs, the respondents have rightly passed the impugned order calling upon the petitioner to produce all the

requisite records including the No Objection Certificate from the other legal heirs.

Section 279 of Madras City Municipal Corporation Act reads thus:-

"279. Prohibition in respect of lodging houses:- (i) No person shall without or otherwise than in confirmity with the terms of a licence granted by the Commissioner in this behalf, keep any lodging house, eating-house, tea-shop, coffee-house, cafe, restaurant, refreshment room, or any place, where the public are admitted for repose or for consumption of any food or drink in any place where food is sold or prepared for sale.

(ii) The Commissioner may at any time cancel or suspend any licence granted under sub-section (i) if he is of opinion that the premises covered thereby are not kept in confirmity with the conditions of such licence or with the provisions of any by law made under Section 349 relating to such premises whether or not the licensee is prosecuted under this Act.

4. In this case, the petitioner's father was running the lodging house till his life time and the respondents have granted licence to run the said lodging house and in the absence of such licence, the said business cannot be carried on. After the demise of his father, the petitioner herein has applied for transfer of the licence pertaining to the lodging house in his name and the respondents by their order dated 12.04.2001 directed the petitioner to produce requisite documents including the legal heirs Certificate and No Objection Certificate from other legal heirs of Late. Hasarathiah. The petitioner Challenge the said order on the ground that the Madras City Municipal Corporation Act does not contemplate production of No Objection Certificate from the legal heirs of the deceased licensee and he is the person carrying on the business along with the deceased licensee till his life time and hence insisting upon him to produce No Objection Certificate from other legal heirs is unsustainable. However, it is admitted by the learned counsel for the petitioner that late. Hasarathiah was one of the partners, who run the business of lodging house besides he was a licencee of the said business.

Now, we look into the relevant provisions of Law relating to " license.
Section 52 of Easement Act :- "License" – Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful and such right does not amount to an easement or an interest in the property, the right is called a license.

Section 56 of Easement Act:- Licence when transferable – Unless a different intention is expressed or necessarily implied, a licence to

attend a public entertainment may be transfered by the licensee; but, save as aforesaid, a licence cannot be transferred by the licensee or exercised by his servants or agents.

Section 60 of Easement Act:- Licence when revocable – A licence may be revoked by the grantor, unless-
(a) it is coupled with a transfer of property and such transfer is in force:
(b) the licensee, acting upon the licence has executed a work of a permanent character and incurred expenses in the execution.

5. A licence is only a right to do or continue to do something which, in the absence of such right be unlawful. In general licence is only a personal privilege as such it is neither transferable or heritable. A licence is not annexed to the property in respect of which it is enjoyed nor is it a transferable or heritable right but is a right purely personal between the grantor and licencee. Unless a different intention appears, it cannot even be exercised by the licencee, servants or agents. Such an intention must be gathered from the terms of the grant, be inferred from surrounding circumstances or be found as an incident of legal usage. In order to be irrevocable under Section 60 of the Easement Act, a licence is to be coupled with a transfer of property. In this case, the licence held by the deceased Hasarathiah was annexed to the property in respect of which it is enjoyed is decendible and heritable.

6. After receipt of objection notice dated 28-03-2001 from some of the legal heirs of the said Hasarathiah, the impugned communication has been sent to the petitioner calling upon him to produce legal heir certificate and NoC along with other documents. The respondents have rightly called for the relevant documents through the impugned communication which is perfectly valid in the eye of law.

7. The argument of learned counsel for the petitioner that no provision in the M.C.M.C. Act is contemplated to insist upon the petitioner to produce the said documents is unsustainable for the reasons mentioned above. I do not find any infirmity in the impugned communication.

The Writ Petition is devoid of merits and liable to be dismissed and accordingly dismissed. No costs. Consequently, connected WPMP is also closed.

13-02-2002
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Index : Yes
Internet: Yes

A. KULASEKARAN, J

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W.P. No. 11552 of 2001
13-02-2002